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effect than to call into requisition the court's judgment on a dispute regarding the title and boundaries of land, is error; courts of equity being without jurisdiction to settle such a dispute, unless there is some peculiar equity.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 53-59; Dec. Dig. § 17.* 10 Va.-W. Va. Enc. Dig. 773.]

2. Courts (§ 24*)—Jurisdiction—Consent.—No acquiescence or consent can give a court of equity jurisdiction over a controversy belonging exclusively to a court of law.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 76-78; Dec. Dig. § 24.* 8 Va.-W. Va. Enc. Dig. 860.]

3. Appeal and Error (§ 882*)—Invited Error—Jurisdiction.—That the trial court had no jurisdiction of the subject-matter, so that its decree on the merits was void, may be taken advantage of on appeal, even by the unsuccessful party, who invoked the court's jurisdiction.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3591-3610; Dec. Dig. § 882.* 1 Va.-W. Va. Enc. Dig. 465.]

4. Costs (§ 236*)—Reversal on Appeal—Liability of Appellant.—Costs will be adjudged against appellants; reversal being merely because the trial court, whose jurisdiction they invoked was without jurisdiction of the subject-matter.

[Ed. Note.—For other cases, see Costs, Cent. Dig. §§ 900-905, 907; Dec. Dig. § 236.* 3 Va.-W. Va. Enc. Dig. 623.]

Appeal from Circuit Court, Buchanan County.

Petition by G. W. Litz and others against J. J. Rowe and others. From an adverse decree, petitioners appeal. Reversed, with directions.

M. O. Lits and Greever & Gillespie, all of Welch, W. Va., and *Ar. A. Skeen*, of Clintwood, for appellants.

Finney, Stinson & Lindsey, for appellees.

McKINNEY v. TRUSTEES OF MONEY OF EMORY AND HENRY COLLEGE, Inc.

Sept. 9, 1915.

[86 S. E. 115.]

1. Waters and Water Courses (§ 70*)—Pollution of Streams—Liability to Lower Riparian Owner.—The discharge of sewage into a stream is such a pollution thereof as entitles a lower riparian owner to recover damages for the injury thereby inflicted, for the act creates a prima facie nuisance, even when necessary or indispensable.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. § 60; Dec. Dig. § 70.* 4 Va.-W. Va. Enc. Dig. 829.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Waters and Water Courses (§ 75*)—Pollution of Streams—Liability to Lower Riparian Owner—"Nuisance."—Though the natural pollution of a stream through populous regions cannot ordinarily be restrained, any use of a stream materially fouling and adulterating the water thereof, or discharge therein of any filth or noxious substance impairing the value of the water for ordinary purposes, or rendering it less wholesome than in its ordinary state, or rendering it offensive to taste or smell, is a "nuisance," which equity will enjoin.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. § 66; Dec. Dig. § 75.* 13 Va.-W. Va. Enc. Dig. 683.]

For other definitions, see Words and Phrases, First and Second Series, Nuisance.

3. Limitation of Actions (§ 55*)—Accrual of Cause—Pollution of Waters.—A cause of action for the pollution of a stream by the discharge therein of sewage accrues when the discharge is in sufficient quantities to pollute the stream and create a nuisance.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 55.* 13 Va.-W. Va. Enc. Dig. 683.]

4. Limitations of Actions (§ 58*)—Accrual of Right—Taking or Damaging Property—Constitutional Protection.—Until there is a taking or a damage to property, the owner thereof has no occasion to invoke the protection of Const. 1902, § 58 (Code 1904, p. ccxxii), prohibiting the Legislature from enacting any law whereby private property shall be taken or damaged for public use without just compensation.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 324-328, 346, 347; Dec. Dig. § 58.* 1 Va.-W. Va. Enc. Dig. 129.]

Appeal from Circuit Court, Wythe County.

Suit by Mary B. McKinney against the Trustees of Emory and Henry College, Incorporated. From a decree dissolving a temporary injunction and dismissing the bill, complainant appeals. Reversed and remanded.

A. Gray Gilmer, of Bristol, and *F. B. Hutton*, of Abingdon, for appellant.

M. H. Honaker and *White, Penn & Penn*, all of Abingdon, for appellee.

MEEM, HASKINS & MITCHELL *v.* BIG AX POCAHONTAS COAL CO. et al.

Sept. 9, 1915.

[86 S. E. 118.]

Corporations (§ 406*)—Contracts—Powers of Officers.—A contract of employment by a corporation of engineers to do surveying for

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.